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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE

MERCON COFFEE CORPORATION, *et al.*,¹

Debtors.

Chapter 11

Case No. 23-11945 (MEW)

Jointly Administered

THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS' RESERVATION OF RIGHTS REGARDING THE MOTION OF THE DEBTORS FOR (I) AUTHORITY TO (A) OBTAIN POSTPETITION FINANCING, (B) USE CASH COLLATERAL, (C) GRANT LIENS AND PROVIDE SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (D) GRANT ADEQUATE PROTECTION, (E) MODIFY THE AUTOMATIC STAY, AND (F) SCHEDULE A FINAL HEARING AND (II) RELATED RELIEF

The Official Committee of Unsecured Creditors (the "Committee") by and through their proposed counsel, hereby file this reservation of rights (the "Reservation of Rights") with respect

¹ The Debtors in these chapter 11 cases, along with the last four (4) digits of each Debtor's federal tax identification number, if applicable, are: Mercon Coffee Corporation (1844); Mercon B.V. (N/A); Mercon Brasil Comércio de Café Ltda. (N/A); Agro International Holding B.V. (N/A); Mercapital de Nicaragua, S.A. (N/A); Distribuidora de Granos de Nicaragua S.A. (N/A); Cisa Export S.A. (N/A); Comercial Internacional de Granos de Honduras, S.A. de C.V. (N/A); Mercon Guatemala, S.A. (N/A); Mercafe Vietnam LTD. (N/A); Comercial Internacional Exportadora, S.A. (N/A). The Debtors' mailing address is: 999 Ponce de Leon Blvd, Suite 910, Coral Gables, FL 33134.

to entry of a final order in connection with the *Motion of Debtors for (I) Authority to (A) Obtain Postpetition Financing, (B) Use Cash Collateral, (C) Grant Liens and Provide Superpriority Administrative Expense Status, (D) Grant Adequate Protection, (E) Modify the Automatic Stay, and (F) Schedule a Final Hearing and (II) Related Relief* [Dkt. No. 5] (the “Cash Collateral Motion”) filed by the above-captioned debtors (the “Debtors”) in the above-captioned bankruptcy cases (the “Chapter 11 Cases”). In support of this Reservation of Rights, the Committee respectfully states as follows:

I. BACKGROUND

1. On December 6, 2023 (the “Petition Date”), the Debtors commenced the Chapter 11 Cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

2. The Debtors have continued in possession of their properties and are operating and managing their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner in these Chapter 11 Cases.

3. On December 13, 2023, the Court entered the *Interim Order (I) Authorizing the Debtors to Use Cash Collateral, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Granting Adequate Protection, (IV) Modifying Automatic Stay, (V) Scheduling a Further Interim Hearing, and (VI) Granting Related Relief* [Dkt. No. 58].

4. On December 21, 2023, the U.S. Trustee appointed the Committee in these Chapter 11 Cases pursuant to the *Notice of Appointment of Official Committee of Unsecured Creditors* [Dkt. No. 74]. On December 26, 2023, the Committee selected O’Melveny & Myers, LLP as Committee counsel, subject to approval by the Court.

5. On January 12, 2024, the Court entered the *Second Interim Order (I) Authorizing the Debtors to Use Cash Collateral, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Granting Adequate Protection, (IV) Modifying Automatic Stay, (V) Scheduling a Further Hearing, and (VI) Granting Related Relief* [Dkt. No. 113] (the “Second Interim Order”).

6. On January 30, 2024, the Debtors filed a *Notice of Extension of Debtors’ Authority to Use Cash Collateral* [Dkt. No. 168], which further extended the use of cash collateral in accordance with section 3(a) of the Second Interim Order until 11:59 p.m. (prevailing Eastern Time) on February 9, 2024.

7. On February 13, 2024, the Debtors filed a *Second Notice of Extension of Debtors’ Authority to Use Cash Collateral* [Dkt. No. 184], which further extended the use of cash collateral in accordance with section 3(a) of the Second Interim Order until 11:59 p.m. (prevailing Eastern Time) on February 23, 2024.

8. On February 13, 2024, the Debtors filed a *Notice of Final Hearing on Motion of Debtors for (I) Authority to (A) Obtain Postpetition Financing, (B) Use Cash Collateral, (C) Grant Liens and Provide Superpriority Administrative Expense Status, (D) Grant Adequate Protection, (E) Modify the Automatic Stay, and (F) Schedule a Final Hearing and (II) Related Relief* [Dkt. No. 185], which set a final hearing on the Cash Collateral Motion for February 27, 2024, at 11:00 a.m. (prevailing Eastern Time).

9. As of the filing of this Reservation of Rights, the Committee has not received a copy of the proposed final order on the Cash Collateral Motion. While the Committee understands that the Debtors and Coöperatieve Rabobank U.A., New York Branch (“Rabobank”) are in the

process of negotiating a further extension on usage of cash collateral including agreement on a proposed final order and corresponding 13-week budget, no agreement has yet been reached.

II. RESERVATION OF RIGHTS

10. Accordingly, while the Committee believes any issues it may have will hopefully be resolved, the Committee files this Reservation of Rights to preserve its rights pending these ongoing discussions, and fully reserves all its rights with respect to the Cash Collateral Motion, including any further interim or final orders, and any and all documents related thereto.

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Dated: February 22, 2024
New York, New York

O'MELVENY & MYERS LLP

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*Proposed Counsel to the Official
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing pleading, was served this 22nd day of February, 2024 via the Court's ECF system upon all counsel of record that are registered ECF users.

/s/ Louis R. Strubeck, Jr.
Louis R. Strubeck, Jr.